

ORIGINAL

ENVER W. PAINTER, JR. 2525

Attorney at Law

1188 Bishop Street, Suite 2505

Honolulu, Hawaii 96813

Telephone: (808) 537-9777

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JAN 28 2008

at 11 o'clock and 50 min. A.M.
SUE BEITIA, CLERK

Attorney for Plaintiff and
Counterclaim/Defendant
Carol J. Nelson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CAROL J. NELSON,) CV 01-00182 KSC
)
Plaintiff,)
vs.)
) PLAINTIFF'S REPLY
ROBERT ALAN JONES) MEMORANDUM IN SUPPORT
) OF MOTION FOR AWARD OF
Defendant.) ATTORNEY'S FEES and
) CERTIFICATE OF SERVICE
_____)
ROBERT ALAN JONES)
)
Counterclaimant,)
vs.) Bench Trial:
) August 7, 2007
CAROL NELSON) Magistrate Judge
) Kevin S. S. Chang
Counterclaim)
Defendant.)
_____)

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF
MOTION FOR AWARD OF ATTORNEY'S FEES**

COMES NOW Plaintiff, Carol J. Nelson, by and through her undersigned counsel, and hereby submits this memorandum in support of her motion for an award of attorney's fees incurred in the defense of Jones' assumpsit claim filed on December 31, 2007.

On January 15, 2008 Defendant Jones "*pro se*" filed an opposition to Nelson's motion wherein he argued that the amount of fees requested by Nelson should be reduced because not all of the claims made in his Second Amended Counterclaim were claims in the nature of assumpsit. Jones argument overlooks the fact that Nelson has already considered and addressed the fact that Jones Second Amended Counterclaim included claims that were not in the nature of assumpsit. Nelson has reduced the fees incurred prior to the Court's granting of her motion for summary judgment as to Jones' Second Amended Counterclaim by 60% in recognition of the non assumpsit claims. As stated in Nelson's Motion filed December 31, 2007 at pages 6 and 7:

Nelson incurred attorneys fees for the undersign counsel's representation in this matter through the Court's granting of her second motion for summary judgment in the amount of \$56,755.49. (See Declaration of Enver W. Painter, Jr and Exhibit B thereto.) Counsel has studies his billings for this period of time and has determined that 2/5 or 40 % of the billings were incurred in defense of Jones' allegations of a contract and Nelson's breach of that contract, i.e. Jones' assumpsit claims. The remaining 60% of the fees

incurred dealt primarily with the other counts of Jones' Second Amended Counterclaim, most of which sounded in tort. Nelson is therefor requesting attorneys fees for the period September 1, 2001 through entry of the Judgment in her favor on July 17, 2003 equal to 40% of the fees incurred during said period in the amount of \$22,702.19. ($\$56,755.49 \times .4 = \$22,702.19$).

The "apportionment" which Jones request be made between assumpsit and non assumpsit claims has already been made and Jones' request for further reduction of the fees to which Nelson is entitled is without merit.

DATED: Honolulu, Hawaii, January 25, 2008.

A handwritten signature in black ink, appearing to read "Enver W. Painter, Jr.", written over a horizontal line.

ENVER W. PAINTER, JR.
Attorney for Plaintiff
CAROL J. NELSON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CAROL J. NELSON,)	CV 01-00182 KSC
Plaintiff,)	
vs.)	
)	
ROBERT ALAN JONES)	
Defendant.)	
_____)	
)	
ROBERT ALAN JONES)	
Counterclaimant,)	
vs.)	
)	
CAROL NELSON)	
Counterclaim Defendant)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that on below date a true and correct copy of the foregoing was duly served upon the following individuals by U.S. Mail postage prepaid at the following address:

ROBERT E. CHAPMAN
MARY MARTIN
700 Bishop Street, Suite 2100
Honolulu, Hawaii 96813

and

Robert Alan Jones Pro Se
1061 E.Flamingo Road, Suite 7
Las Vegas, Nevada 89119

DATED: Honolulu, Hawaii, January 25, 2008

A handwritten signature in black ink, appearing to read 'E. W. Painter, Jr.', written over a horizontal line.

ENVER W. PAINTER, JR.
Attorney for Plaintiff/Counterclaim
Defendant CAROL J. NELSON